

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

_____	)	
UNITED STATES	)	
	)	
V.	)	No. 14-CR-10143-WGY
	)	
JOSHUA WAIRI	)	
_____	)	

**DEFENDANT'S MOTION FOR INDIVIDUAL VOIR DIRE OF POTENTIAL JURORS**

The defendant moves, pursuant to Fed. R. Crim. P. 24(a), that certain questions, enumerated below, be asked of the venire as a group. Any juror who signals an affirmative response to a question would be asked about the answer during a subsequent individual voir dire.

The defendant further moves that the Court conduct an individual voir dire of the jury regarding other proposed questions, and that counsel be allowed to ask follow-up questions of the potential jurors.

The defendant is charged with possession of child pornography, transportation of child pornography, and production or attempted production of child pornography. The evidence includes photographs of young boys involved in graphic sexual acts, and videos of naked boys in public locker-room showers, including their toweling off and getting dressed. The

photographs of the children engaged in sexual acts are abhorrent, disturbing, and inflammatory. It is virtually certain that the potential jurors have never seen anything like these pictures.

It is critical that the jurors be alerted to this evidence during the voir dire so that they can assess whether it may evoke such strong feelings and emotions that they will not be able to decide impartially the guilt or innocence of the defendant. Moreover, the questioning must be individual, out of the hearing of fellow jurors, because the jurors likely would be reluctant to voice openly their candid reactions in a group setting. Individual questioning will provide maximum privacy and confidentiality to the prospective jurors.

Finally, the defendant moves that the Court ask each juror individually what the word "lascivious" means. The defendant explains the basis for this critical question in the accompanying memorandum of law.

**Proposed Questions for the Venire as a Group**

1. Have you, a family member, or close friend ever been an employee of or associated with an organization that investigates allegations of child abuse, or worked with child abuse victims, such as the Department of Children and Families, the Department of Social Services, or advocacy groups for abused children?

2. Have you, a family member, or close friend ever worked for a local, state, or federal law enforcement agency, such the police, F.B.I., or a prosecutor's office?

3. Would you hold it against Mr. Wairi in any way if he did not testify at this trial or call any witnesses on his behalf?

**Proposed Questions for the Venire Individually**

4. Have you, a family member, or close friend ever been the victim of sexual abuse?

5. The allegations against Mr. Wairi are that he possessed child pornography, received or sent child pornography over the internet, and produced or attempted to produce child pornography. Do you have a reaction to the allegations that might make it difficult for you to be fair and impartial in this case?

6. The jury will have to view photographs and video tapes that the government alleges to be child pornography. The evidence includes photographs of young boys involved in graphic sexual acts. The jury also will see videos of naked boys in public locker-room showers, including their toweling off and getting dressed. Do you think that viewing such images would upset or disturb you in a way that would affect your ability to remain fair and impartial in this case?

7. You will be asked to decide whether the videos contain a "lascivious" exhibition of the genitals. How would you define the word "lascivious?"

Joshua Wairi,  
By His Attorneys

J. W. Carney, Jr.

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April 24, 2015

Certificate of Service

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on or before the above date.

J. W. Carney, Jr.

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**AFFIDAVIT SUPPORTING**  
**DEFENDANT'S MOTION FOR INDIVIDUAL VOIR DIRE OF POTENTIAL JURORS**

I, J. W. Carney, Jr., state that the facts contained in the attached motion are true to the best of my information and belief.

Signed under the penalties of perjury.

*J. W. Carney, Jr.*

J. W. Carney, Jr.

April 24, 2015